



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 3754-00

17 July 2000

MAJ [REDACTED] USMC

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 13 July 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 26 May 2000, and the advisory opinion from the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 13 June 2000, copies of which are attached. They also considered your rebuttal letter dated 6 July 2000 with enclosure.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

In finding that the contested fitness reports should stand, the Board substantially concurred with the comments contained in the report of the PERB. Specifically regarding the contested adverse fitness report for 4 May to 9 August 1998, they were unable to find that it reflects unfounded accusations, or that the reviewing officer exerted undue influence on the reporting senior's subjective appraisal. They found that the third sighting officer added no new adverse information requiring referral to you. To the extent that the reviewing officer's comments can be read as referring to the preceding period, they found that he could properly document a pattern of behavior supporting the decision to relieve you for cause.

Concerning your failure by the Fiscal Year (FY) 2000 Lieutenant Colonel Selection Board, the Board found that the contested fitness report for 10 to 31 August 1998 was properly considered, and that the absence of the adverse report for 4 May to 9 August 1998 was to your advantage. They found that both contested reports were properly considered by the FY 2001 Lieutenant Colonel Selection Board. Since they found insufficient basis to strike either of your failures of selection for promotion, they had no grounds to recommend you for consideration by a special selection board, or to set aside action to effect your involuntary retirement on 1 August 2000.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

3754-00

IN REPLY REFER TO:
1610
MMER/PERB
26 MAY 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
MAJOR [REDACTED] USMC

Ref: (a) Major [REDACTED] DD Form 149 of 14 Mar 00
(b) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 14 March 2000 to consider Major [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 980504 to 980809 (CD)
- b. Report B - 980810 to 980831 (TR)

Reference (b) is the performance evaluation directive governing the submission of both reports.

2. The petitioner states he was never given any specific rationale or explanation for his relief for cause; that Lieutenant Colonel [REDACTED] presented him with a signed evaluation (enclosure (5) to reference (a)) and he signed the document without any counseling by the Reporting Senior. The petitioner goes on to narrate the events and circumstances surrounding the preparation of the report and his account of the situation in the command during the stated reporting periods. He also takes exception with much of the information gathered and relayed as a result of investigatory actions. To support his appeal, the petitioner furnishes 18 items of documentary material.

3. In its proceedings, the PERB concluded that both reports are administratively correct and procedurally complete as written and filed. The following is offered as relevant:

- a. At the outset, the Board observes that much of what the petitioner has surfaced in his statement appended to reference (a) is similar to those issues raised in his rebuttals to Report A. Those matters were sufficiently adjudicated by the Reviewing and Third Sighting Officers, and nothing furnished with reference

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(a) discounts or invalidates the conclusions reached by either
Colonel [REDACTED] or Major General [REDACTED]

b. Because of the petitioner's denial of ever being properly counseled or receiving command guidance, and because of his disparaging comments about Colonel [REDACTED], the General Officer sighting the report (Major General [REDACTED] directed that an impartial investigation be conducted by an officer outside of MACG-48. Following that investigation, Major General [REDACTED] determined the petitioner had received proper counseling and command guidance; that the report at issue was done properly; and that neither the Reporting Senior nor the Reviewing Officer had compromised themselves in dealing with the petitioner, and their respective evaluations at Report A were true and accurate.

c. Report A was completed late; however, given the fact that a field grade officer had been relieved from command for cause, and the time it took to answer the petitioner's two rebuttals, the delay in ensuring the report was correct is not contrary to the spirit and intent of reference (b). Furthermore, the fact that the Commanding General, 4th Marine Aircraft Wing (Major General [REDACTED]) had to send the first iteration of Report A back to the Reporting Senior for correction is not an invalidating factor (see enclosure (6) to reference (a)). That was his obligation and his action explains the timeline of submission.

d. Contrary to the petitioner's contentions, the Board does not view Report A as being used in lieu of disciplinary action under the UCMJ. He was relieved for poor leadership examples, poor judgment, and disloyalty -- all of which was clearly explained and a valid reason for relief and the resulting fitness report.

e. The observation of the petitioner by the former Commanding Officer of Marine Air Control Squadron-24 occurred prior to the period covered by Report A. Furthermore, that individual clearly states in paragraph seven of enclosure (12) to reference (a) that his knowledge of what transpired was merely his perception vice actual firsthand knowledge. As for Captain [REDACTED] advocacy comments at enclosure (13) to reference (a), he may have known some of the facts, but he does not establish how he was more knowledgeable and privy to all of the petitioner's responsibilities to and interactions with the Reporting and Reviewing Officers than they were. Further, his account of what he perceives happened lacks significant credibility when he

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MAJOR [REDACTED] SMC

presumes to speak for [REDACTED] and [REDACTED]. If the input of these officers was so valuable, they should have been solicited for statements.

f. The comments made by Master Gunnery Sergeant [REDACTED] at enclosure (14) to reference (a) are certainly favorable. He was, however, admittedly short of most of the facts surrounding the petitioner's relationship with the Reporting and Reviewing Officers. Simply stated, he was in no position to form a credible conclusion that the petitioner had been treated unfairly. Finally, the authenticity and credibility of the statements contained in enclosures (15), (16), and (17) to reference (a) are not known. The source of these supposed interviews is neither documented nor signed by either the interviewer or interviewee.

g. Although the Reporting and Reviewing Officers for Report B are the same as the Report A, given that the petitioner was in a new billet for only 21 days, the "not observed" evaluation contained in Report B is completely within the spirit and intent of reference (b). There is no discernible error or injustice.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports should remain a part of Major [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]
[REDACTED]
[REDACTED]
Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps



DEPARTMENT OF THE NAVY
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3754-00

IN REPLY REFER TO:

1600
MMA-4
13 Jun 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR MAJOR [REDACTED]

Ref: (a) MMER Request for Advisory Opinion in the case of
Major M [REDACTED] C
of 8 Jun 00

1. Recommend disapproval of Major [REDACTED] request for removal of his failures of selection.
2. Per the reference, we reviewed Major [REDACTED] record and petition. He failed selection on the FY00 and FY01 USMC Lieutenant Colonel Selection Boards. Subsequently, he unsuccessfully petitioned the Performance Evaluation Review Board (PERB) for removal of the Change of Duty fitness report of 980504 to 980809 and the Transfer fitness report of 980810 to 980831. Major [REDACTED] requests removal of his failures of selection.
3. In our opinion, removing the petitioned reports would have significantly increased the competitiveness of the record. However, the unfavorable PERB action does not reflect a material change in the record as it appeared before the FY00 and FY01 Boards and his record received a substantially complete and fair evaluation by both boards. Therefore, we recommend disapproval of Major [REDACTED] request for removal of his failures of selection.
4. Point of contact [REDACTED]

[REDACTED]
Major, U.S. Marine Corps
Head, Officer Career Counseling and
Evaluation Section
Officer Assignment Branch
Personnel Management Division